IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02/07/2004

Coram

The Honourable Mr. Justice T.V. MASILAMANI

C.R.P.No.3424 of 1997 and C.R.P.No. 1937 of 1999
and
C.M.P.No.8279 of 1998

Rohini Kumar .. Petitioner in both
the C.R.Ps.

-Vs-

1. Hassan Mohamed
2. Ubayathullah .. Respondents in both
the C.R.Ps.

C.R.P.No.3424 of 1997 against the judgment and decree dated 14.8.199 7 made in R.C.A. No.3 of 1996 on the file of the Rent Control Appellate Authority (Principal Subordinate Judge), Myladuthurai reversing the fair and decretal orders dated 11.7.1996 in R.C.O.P.No.24 of 1994 on the file of the Rent Controller (Principal District Munsif), Myladuthurai.

C.R.P.No.1937 of 1999 against the judgment and decree dated 14.8.199 7 made in R.C.A. No.4 of 1996 on the file of the Rent Control Appellate Authority (Principal Subordinate Judge), Myladuthurai reversing the fair and decretal orders dated 11.7.1996 in R.C.O.P.No.27 of 1994 on the file of the Rent Controller (Principal District Munsif), Myladuthurai.

!For Petitioner : Mr.P.Rajagopal

^For Respondents : Mr.K.Chandramouli, S.C.
For Mr.S.Viswanathan

:O R D E R

The revision petitioner is the landlord of the petition premises who failed in the appeals before the Rent Control Appellate Authority (Principal Subordinate Judge), Myladuthurai.

2. The petitioner/landlord preferred the rent control petitions in R.C.O.P.No.24 of 1994 before the Rent Controller (District Munsif), Myladuthurai under Section 10(2)(i) and 10(3)(a)(iii) of the Tamil Nadu

Building (Lease and Rent Control) Act 1960 (hereinafter referred to as Tamil Nadu Act 18 of 1960) for eviction of the respondents/ tenants on the ground that the petitioner requires the building for his own use and occupation, as the landlord of the building where he is running the business under the name and style of "Murugan Medicals" requires him to vacate the same and that further he has proposed to start a new business under the name and style of "Yogam Benefit Fund Ltd" in the first floor of the building which is also required for his own use and occupation.

3. The learned Rent Controller having analysed the evidence both oral and documentary and upon hearing both sides held that the petitioner requires the ground floor building bona fide for his own use and occupation to shift his business carried on in a rented premises and he also requires the first floor of the building bona fide for carrying on a new business under the name and style of "Yogam Benefit Fund Ltd". Since the petitioner has proved his

bona fide requirement, he allowed the petition and the appeal preferred by the respondents in R. C.A.No.3 of 1996 was allowed and hence the revision in C.R.P.No.3424 of 1997 has been preferred by the petitioner.

4. Similarly, the petitioner filed R.C.O.P.No.27 of 1994 under Section 10(2)(ii)(b) of Tamil Nadu Act 18 of 1960 on the ground that the respondents have started to carry on a new business against the terms of the rental agreement and they have also committed waste to the premises in running such business. The learned Rent Controller has accepted the contention of the petitioner and held that the respondents have put the building to a different user than that of the user for which it was leased and therefore allowed the petition as prayed for and the respondents have preferred the appeal in R.C.A.No.4 of 1996 and it was allowed. Hence, the revision in C.R.P.No.1937 of 1999.

5. The respondents have preferred appeals in R.C.A.Nos.3 of 1996 and 4 of 1996 before the Rent Control Appellate Authority as against the fair and decretal orders of the Rent Controller in R.C.O.P.Nos.24 of 1994 and 27 of 1994 respectively. The learned Rent Control Appellate Authority having analysed the evidence on record and upon hearing the contentions of either side reversed the findings rendered by the Rent Controller in both the petitions and allowed the appeals by setting aside the fair and decretal orders passed by the Rent Controller. The revision petitioner has preferred these revisions challenging the judgments and decretal orders passed by the Rent Control Appellate Authority in the above said proceedings.

6. In the above circumstances, it has become necessary to consider whether the revision petitioner/landlord is entitled to get vacant possession of the building from the respondents/tenants on the ground of bona fide requirement of the building for own use and occupation and also for carrying on a new business and whether the respondents have put the building to different user and also committed acts of waste as alleged by the petitioner.

7. Admittedly, the petition premises comprised of the ground floor and the first floor belonged to the petitioner and the first respondent became

the tenant of the ground floor to carry on a business by means of a rental agreement entered into between the parties on 18.1.19 84 (vide) Ex.P-1. Similarly, it is not in controversy that the the first floor had also been rented out to the first respondent in 1987 soon after the said portion was constructed by the petitioner.

8. The petitioner has also pleaded before the Rent Controller that the first respondent committed wilful default in the payment of rent at Rs.5,500/- for both the ground floor and the first floor. On this aspect, the learned Rent Controller held on the basis of the recorded evidence that the rent agreed between the parties in respect of both the ground floor and the first floor was Rs.1,000/- each and that the petitioner has not established the plea of wilful default in the payment of rent as pleaded by him and the said finding of fact has also been upheld by the Rent Control Appellate Authority. Since there is no revision preferred by the petitioner in that respect, the decision of the forums below has become final. Hence, it can be held on the basis of the evidence on record that the first and second respondents became the tenants of both the ground floor and the first floor respectively under the petitioner.

9. The first contention of the petitioner is that he was running a medical shop in a rented building in the same town, namely, Myladuthurai under the name and style of "Murugan Medicals" and that since the owner of the said building issued a notice under Ex.P-2 calling upon him to vacate the same, he requires the petition premises for carrying on the said business.

10. The learned counsel for the revision petitioner has adverted my attention to the finding rendered by the Appellate Authority in the matter and argued with reference to the decisions MUNUSWAMY v. NATHAN (1996 (I) M.L.J. 176) and INDIAN ORGANIC CHEMICALS LTD v. RADHA VENKATARAMAN (1997-2-L.W. 517), that in the eviction proceedings in respect of such premises need not be supported by the evidence of the landlord of the petitioner and that the evidence of the petitioner herein coupled with Ex.P-1 is sufficient to prove that the requirement of the premises is bona fide.

11. In this context, the learned Rent Control Appellate Authority held that mere issuance of notice is not sufficient and that since the petitioner has not proved that any eviction proceedings has been initiated against him in respect of the rented premises, he has not proved his bona fide requirement.

12. On the contrary, the ratio laid down in the decision referred supra, makes it clear that the evidence of P.W.1, father of the petitioner, coupled with the notice under Ex.P-1 would be sufficient enough to come to the conclusion that the landlord of the rented premises, where the petitioner is carrying on his business, initiated action against the petitioner for eviction from that premises. Hence, I am unable to accept the contention of the learned counsel for the respondents that the finding rendered by the learned Rent Control Appellate Authority has to be upheld. It is in these circumstances that this Court holds that the petitioner has proved his bona fide requirement of the ground floor of the building for his own use and

occupation to run the business which he is admittedly running in a rented premises.

13. The respondents have taken a petition in C.M.P.No.8279 of 1998 on this aspect of the matter to show that the petitioner's requirement is not bona fide in view of the additional document filed along with the petition to prove that he is in fact running a business under the name and style of "Saravana Agency" for selling coffee powder, but, he is not running a medical shop in the said premises as contended by him.

14. Per contra, the petitioner has resisted the petition by filing a counter affidavit wherein he has clearly stated that temporarily he has suspended the business in the medical shop and started the business in consumer products and that as and when the petition premises is vacated by the respondents, he would continue the medical shop business in his own premises. Moreover, the learned counsel for the petitioner has pointed out the evidence on record and finding rendered by the Courts below that on the date of filing the Rent Control Petition, the petitioner was running the medical shop under the name and style "Murugan Medicals" and it has been held by the learned Rent Controller that the respondents admitted in the course of the said proceedings that the petitioner was running a medical shop in the rented building under the name and style of "Murugan Medicals" and therefore even if the subsequent change in the business made by the petitioner in respect of the rented premises is held to be true, such fact will not in any way obviate the finding rendered by the learned Rent Controller on this aspect of the matter. Hence, this Court is of the considered view that the learned Rent Control Appellate Authority was wrong in concluding that the petitioner has not established his bona fide requirement of the building on this ground and therefore such a finding has to be necessarily reversed.

15. It is not disputed that the second respondent, son of the first respondent has become the tenant of the first floor of the petition premises in the year 1987 and the first respondent as R.W.1 has also admitted that his son, second respondent herein is the tenant of the first floor of the petition premises. The contention of the petitioner is that he requires first floor of the petition premises for the purpose of starting another business under the name and style of " Yogam Benefit Fund Limited" In this regard, Ex.P-12 communication from the Central Government in connection with the said business addressed to P.W.1 is produced in support of the petitioner's contentions.

16. The learned counsel for the petitioner has argued that the finding rendered by the learned Appellate Authority that no steps had been taken by P.W.1 or by the petitioner to start the said business and that therefore the requirement of the building is not bona fide cannot be sustained for the simple reason that even if one step in the series of steps is taken to commence a new business, it is sufficient requirement to prove the bona fide requirement of the landlord and he has relied on the decision of this Court rendered by M. KARPAGAVINAYAGAM, J. in T.V. JAGATRAKSHAGAN AND OTHERS v. N. FUTAREE BAI AND OTHERS (2000-3-L.W. 195). Hence, he has urged that in view of the said ratio in the light of Ex.P-12, the requirement of the first floor of the building by the petitioner has to be held as bona fide.

17. The learned counsel for the respondent has argued strenuously that even though P.W.1 requires the said portion of the building for running the business of benefit fund, he has not adduced any acceptable evidence to show that he has taken steps to start the business of benefit funds and therefore he has urged that the finding rendered by the learned Rent Control Appellate Authority has to be confirmed. In support of his contention, he has cited the decision, RAJU CHETTIAR v. STATE OF TAMIL NADU (82 L.W. 695). In that judgment a Division Bench of this Court held as follows:-

" "Carrying on a business" may consist of a series of steps, and even if one step is proved, we do not see why the requirement is not satisfied. But, if there is no step at all whatever and the matter is only in the stage of intention, it is difficult to bring such a case within the phraseology of the statute."

Hence, I am of the opinion that since the facts and circumstances involved in the said case are different from that of the case on hand, the ratio laid down therein is not applicable herein particularly in view of the evidence of P.W.1 and Ex.P-12 in this case.

18. Similarly, the contention put forth by the respondents' counsel that the petition filed by the son in this regard is not helpful to prove the bona fide requirement of P.W.1, father of the petitioner, cannot also be accepted in view of the ratio laid down in the decision MUNUSWAMY v. NATHAN (1996 (I) M.L.J. 176) cited by the learned counsel for the petitioner. In the said judgment S.S. SUBRAMANI, J. held as follows:

"The requirement for separate accommodation may be for the member of the family. But the bona fide is on the landlord. So, the nonexamination of the person for whom it is required is not the basis." - [(vide) Head note at page 176].

19. Hence, in view of the fact of the case in the light of the said ratio in the decision cited above, the petitioner's bona fide requirement of the first floor of the building for own use and occupation on behalf of his father, P.W.1 herein has been proved beyond doubt. Hence, the finding rendered by the learned Rent Control Appellate Authority in this regard has to be set aside.

20. The next contention of the petitioner is that on the ground of change in user and commission of acts of waste in the petition premises by the respondents, they are liable to be evicted from the same. It is not disputed that in Ex.P-1 rental agreement dated 18.1.1984, the specific purpose for which the ground floor of the building was rented out had not been mentioned. But on the other hand, the first respondent was entitled to run a business either in his individual capacity or as a partner in the ground floor of the premises (vide) clause (4) in the rental agreement. Hence, the learned counsel for the respondents has argued and in my opinion rightly that without specifying the nature and purpose of the business to be carried on by the first respondent, rental agreement was entered into between the parties and that therefore with the consent of the petitioner, the first respondent was

running the printing press for about 5 or 6 years prior to the filing of the petition.

21. The petitioner himself has admitted as P.W.1 in his crossexamination that two or three years prior to the filing of the rent control petition, the respondents started the printing press as well as the paper mart in the petition premises and therefore this Court is of the considered view that the learned Appellate Authority was correct in holding that the first respondent was running such business enterprise in the petition premises with the knowledge and consent of the petitioner. It follows that the further contention of the petitioner that the respondents committed the acts of wastes by running the printing press cannot be sustained especially in the absence of convincing evidence adduced on that behalf and therefore the finding rendered on this aspect by the learned Rent Control Appellate Authority has to be confirmed.

22. For the reasons stated above, the Civil Revision Petition No.342 4 of 1997 is allowed setting aside impugned judgment and decretal order passed by the learned Rent Control Appellate Authority in R.C.A. No.3 of 1996 and restoring the fair and decretal orders passed by the Rent Controller in R.C.O.P.No.24 of 1994. The Civil Revision Petition No.1937 of 1999 relating to R.C.A.No.4 of 1996 is dismissed.

23. In the result, Civil Revision Petition No.3424 of 1997 is allowed and Civil Revision Petition No.1937 of 1999 is dismissed. C.M.P. No.8279 of 1998 is ordered. However, there will be no order as to costs. The respondents/tenants are given three months' time to vacate the property subject to condition that they file an affidavit within ten days from today giving an unconditional undertaking that they will vacate the property on or before 2-10-2004 failing which the revision petitioner/landlord will be at liberty to execute the order of eviction.

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To
1. The Rent Control Appellate Authority (Principal Subordinate Judge), Myladuthurai.
2. The Rent Controller (Principal District Munsif), Myladuthurai.
3. The Section Officer, V.R.Section, High Court, Madras.